IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 21810 of 2004(U)

AGAINST THE ORDER IN EP.16/03 IN
OS.355/1998 of PRL.SUB COURT,THRISSUR
.....

PETITIONER:

SANKARA NARAYANAN,
S/O. THACHAPPULLY RAMANKUTTY, KANDASSERY VILLAGE,
NAMBAZHIKAD DESOM, THALAPPILLY TALUK.

BY ADV. SRI.M.SASINDRAN
SRI.T.P.ELDHO

RESPONDENTS:

RAGHAVAN, S/O. VALLIKATHIRI ITOORAN,
ANJOOR VILLAGE, CHERUVATHANI DESOM,
THALAPPILLY TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SMT.E.SHIJI ELEZEBATH PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/06/2007, ALONG WITH WPC NO. 33269 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21810 of 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE DECREE DATED 31.7.2002 IN O.S. NO.355/98

EXHIBIT-P2: TRUE COPY OF THE EXECUTION PETITION NO.16/2003

EXHIBIT-P3: TRUE COPY OF THE SCHEDULE OF DRAFT SALE PROCLAMATION

EXHIBIT-P4: TRUE COPY OF THE E.A. NO.1508/2003

EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 12.3.2004 IN E.A. NO.1508/2003

/TRUE COPY/

P.A TO JUDGE

PIUS C.KURIAKOSE, J.

WP (C) Nos 33269 and 21810 of 2004

Dated this the 19th day of June, 2007

JUDGMENT

The respondent in W.P (C) No. 21810 of 2004 has obtained Ext.P1 decree for realisation of advance amounts in his suit which was for specific performance of a contract of sale property with an alternate prayer for return of advance amount. Even though the decree does not purport to provide charge over the scheduled property, the decree holder sought to execute the decree by bringing the properties which were specifically shown in the decree scheduled to sale. Properties are two items.

2. In W.P. (C) 21280/2004 filed by the judgment debtor, his grievance is that the E.P. amount is only around Rs. 3,00,000/- and it is not necessary to sell both the items for realising the decree debt. The above contention was repelled by the Sub Judge under Ext.P5 in that writ petition. The view taken by the Sub Judge is that the decree holder is entitled to sell both the items since such sale is necessary for realising the decree debt in full.

3. Writ Petition (C) No.33269 of 2004 is filed by the decree holder. His grievance is that though the court below had

under Ext.P1 order fixed separate reserve prices for the two items of properties proposed to be sold and had permitted the decree holder to bid and the decree holder actually bid for one of the items for an amount of Rs. 1,50,000/- in part satisfaction of the the decree debt, the learned Judge by Ext.P3 order has refused to accept the sale on the ground that the sale of one item alone cannot be accepted and both the items have to be sold together.

4. I have heard the submissions of Sri. M.Sasindran and Sri.P.Vijaya Bhanu, the counsel for the parties. The learned counsel for the petitioner in W.P. (C) No. 21280 of 2004 reiterated his contention in the court below that just 6 cents from out of either of the properties will be sufficient for realising the decree debt. Counsel also submitted that pursuant to the interim orders passed by this court in his writ petition, an amount of Rs.35,000/- has been deposited towards the decree debt. In other words, his submission is that all sincere endeavours are being made by the judgment debtor to raise the amounts and to pay off the decree holder.

5. I find merit in the submission of the learned counsel for the petitioner in W.P.(C) No. 33269/2004 that in the light of Ext.P1 order produced in that case, the learned Subordinate Judge was not justified in insisting under Ext.P3 that the properties cannot be sold separately but it should be sold only together. The code also mandates that the execution court shall ensure that only such portion of the property as is necessary for realising the decree debt be sold. Ext.P3 in W.P.(C) 33269/2004 is therefore liable to be set aside. I set aside Ext.P3 order and direct the Sub Judge, Thrissur to pass fresh orders on the request of the decree holder. The above direction need be complied with only after the directions which are being issued in W.P. (C) No. 21810/2004 are complied with. W.P. (C No.21810/2004 is disposed of with the following directions:

The stay presently issued in W.P.(C) No. 21810/2004 will continue for another period of five months from today. It is open to the petitioner to identify a purchaser for any portion of the decree scheduled properties who will be prepared to pay the amount necessary to discharge the entire balance decree debt. One such a purchaser is identified, the respondent will be

informed and the respondents concurrence will be obtained. Irrespective of whether the respondents concurrence is obtained or not, the petitioner will produce copy of the agreement which enters into with the prospective purchaser before the court below and file an application for permission to sell such property covered by that agreement to the prospective purchaser. The court below on considering that application will allow the same after ensuring that the sale proceeds or such portion of same as necessary to discharge the decree debt in full is received by the respondent/decree holder. W.P.(C) 33269/2004 is allowed and W.P. (C) No.21810/2004 is disposed of as above..

(PIUS C. KURIAKOSE, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007